SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957 1958

No. 652

JAMES CLIFTON HAWKINS, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 9, 1957
CERTIORARI GRANTED JANUARY 20, 1958

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[fol. 1]

IN THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

No. 5646

JAMES CLIFTON HAWKINS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

STATEMENT OF POINTS RELIED UPON BY APPELLANT IN HIS APPEAL—Filed June 11, 1957

Comes now the appellant, James Clifton Hawkins, and designates the points upon which he relies in his appeal in this cause as follows:

1. The Court erred in permitting the wife of the appellant to testify on behalf of the Government over the objection of the appellant.

2. The Court erred in permitting the introduction of testimony concerning the conduct of the victim, Lola Faye Mowdy, in the City of Tulsa, out of the presence of the appellant of which appellant had no knowledge or control.

3. The Court erred in over-ruling the motion of the appellant to grant a judgment of acquittal at the conclusion of the governments evidence.

4. The Court erred in over-ruling the motion of the appellant to grant a judgment of acquittal at the conclusion of all the evidence in the case.

Respectfully submitted.

Cleon A. Summers, Attorney for Appellant.

[fol. 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 12,849, Criminal.

UNITED STATES OF AMERICA, Plaintiff,

v.

JAMES CLIFTON HAWKINS, Defendant.

INDICTMENT—Filed September 10, 1956

The Grand Jury Charges:

On or about November 23, 1955, James Clifton Hawkins knowingly transported Lola Faye Mowdy in interstate commerce from Mena, Arkansas, to Tulsa, Oklahoma, in the Northern Judicial District of Oklahoma, for immoral purposes.

A True Bill

Charles H. Froeb, Assistant U. S. Attorney.

Francis (illegible) Beace, Foreman.

IN UNITED STATES DISTRICT COURT

VERDICT—Filed October 2, 1956

We, the Jury, find the defendant, James Clifton Hawkins, ... guilty, as charged in the indictment.

Date: Oct. 2, 1956

J. O. Crider, Foreman.

[fol. 4]

IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT—November 28, 1956

On the 2nd day of October, 1956, came the attorney for the government and the defendant appeared in person and by counsel, Cleon A. Summers.

It Was Adjudged that the defendant had been convicted upon his plea of not guilty and a verdict of guilty of the offense of having violated Title 18, U.S.C., 2421, as charged in the Indictment.

It Was Adjudged that the defendant was guilty as charged and convicted, and imposition of sentence was passed.

Now, on this 28th day of November, 1956 came the attorney for the government and the defendant appeared in person and by counsel, Cleon A. Summers. The court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

W. R. Wallace, United States District Judge.

Approved as to form: Charles H. Froeb, Assistant U. S. Attorney.

In United States District Court

Notice of Appeal—Filed November 28, 1956

Name and address of appellant; James Clifton Hawkins, P. O. Box 85, Cove, Arkansas.

[fol. 5] Name and address of appellant's attorney; Cleon A. Summers, 410 Surety Building, Muskogee, Oklahoma.

Offense; violation of Mann Act, Title 18, Section 2421, U.S.C.

Concise statement of judgment or order, giving date, and any sentence; Sentenced November 28th, 1956 to the custody of the Attorney General for a term of five years.

Name of institution where now confined, if not on bail; Admitted to bail.

I, the above named appellant, hereby appeal to the United States Court of appeals for the Tenth Circuit from the above stated judgment.

Dated November 28, 1956.

James Clifton Hawkins, Appellant

Cleon A. Summers, Attorney for Appellant.

In United States District Court

Clerk's Note Re: Orders Extending Time for Docketing Cause

[By orders of December 31, 1956, and March 7 and April 23, 1957, the time for docketing the cause in the Court of Appeals was extended to June 15, 1957.]

IN UNITED STATES DISTRICT COURT

TRANSCRIPT OF TRIAL PROCEEDINGS

*****

LOLA FAY MOUDY, called as a witness on behalf of the plaintiff, testified:

Direct examination,

By Mr. Froeb:

Q. Will you state your name to the jury, please?
A. Lola Fay Moudy.
Q. How old are you, Lola?
A. 18.
[fol. 6] Q. And what year were you born?
A. '38.
Q. 1938?
A. Uh huh.
Q. What was the month and the day?
A. The 28th of August.
Q. 28th of August?
A. Uh huh.
Q. And are you married or single?
A. Married.
Q. And what is your husband's name?
A. Boyd.
Q. And how long have you been married, Lola?
A. Be two months the 4th of this month.
Q. Where are you living now?
A. Salem, Oregon.
Q. And how long have you lived in Salem?
A. I've been up there about six months.
Q. And where did you live prior to that time?
A. Over close to Beachland, Oklahoma.
Q. Is that near Dogpatch, Oklahoma?
A. Yes, sir.
Q. How far is that from Mena, Arkansas?
A. It's probably about 17 miles, something like that.
Q. 17 miles?
A. Maybe farther, I don't know.

Q. Did you go to school in the Beachland community?
A. Yes.
Q. How much education did you have?
A. I went two years to high school.
Q. You were 16 then when you left high school?
A. Yes, something like that.
Q. What does your father do, Lola?
A. Well, he's working down in Texas somewhere.
Q. What kind of work does he do?
A. Farm work, I think.
Q. Farm work?
A. Uh huh.
Q. Does he pick cotton?
A. Yes.
Q. How many children are there in the family?
A. There was seven.
Q. Seven?
A. (Nods affirmatively.)
Q. Are you the oldest?
A. Yes.
Q. Now do you know the defendant, James Clifton Hawkins?
A. Yes.
Q. Can you point him out to us?
A. Right there.
Q. How long have you known him, Lola?
A. I met him last fall, maybe the summer, I don't know.
Q. About the summer of 1955?
A. (Nods affirmatively.)
Q. Now where did you first meet him?
A. At the Narrows.
Q. At the Narrows, is that near your home?
A. Yes.
[fol. 7] Q. Is that down in the southeast corner of Oklahoma?
A. Well, I don't know what direction it is.
Q. Is it near Dogpatch?
A. Oh, it's a good ways from Dogpatch.
Q. Now did you ever make a trip to Tulsa with the defendant, James C. Hawkins?
A. Yes.

Q. Can you tell us what the purpose of that trip was?

Mr. Summers: I object to that, your Honor.

The Court: Well, yes.

By Mr. Froeb:

Q. Will you tell us what the circumstances were that occasioned your going on that trip, will you tell the Court that?

A. You mean what I was going up there for?

Q. Yes, when was it that you made this trip to Tulsa?

A. It was sometime in November.

Q. In November. Was it after the middle of November?

A. Yes.

Q. Was that the first time you had been up to Tulsa?

A. Yes.

Q. Is that the only trip you made up to Tulsa with Hawkins?

A. Yes.

Q. All right. Now did you have a conversation with Hawkins prior to going on this trip?

A. Yes.

Q. And who was present at the conversation, just you and Hawkins?

A. Yes.

Q. Is that right? Well, now, will you tell us in substance, can you tell the jury what the conversation was that you had with Hawkins prior to going on this trip?

A. Well, I was working over at Ralph Nichols at that time.

Q. Tell the Court who Ralph Nichols is.

A. Who he is?

Q. (Nods affirmatively.)

A. He owns a place there in Dogpatch.

Q. He owns a place in Dogpatch?

A. He did.

Q. What kind of a place is it?

A. Well, it was just a tavern.

Q. Just a tavern?

A. Sold beer.

Q. Now is there another tavern there in Dogpatch, or bar?

A. No, not where they sell beer.

Q. Well, does James Hawkins work in Dogpatch?

[fol. 8] A. Well, he owned that dance hall down there.

Q. He owns the dance hall?

A. (Nods affirmatively.)

Q. I see. And how many buildings are there in Dogpatch?

A. Well, there's two, I think.

Q. Just two?

A. Unless they've built one since I've been over there.

Q. All right. What was this conversation that you had with Hawkins? Would you relate that to the jury?

A. Yes. I said I wanted to find a better job or something, make more money, and he asked if I wanted to come up here with Jane.

Q. Will you talk a little louder, please?

A. Yes. He asked me if I wanted to come up here to Tulsa and work with Jane.

Q. And work with Jane?

A. Uh huh.

Q. Who is Jane?

A. Who is she?

Q. Yes.

A. That's Jane Wilson.

Q. Jane Wilson, who is she?

A. I don't know who she is. I mean I know her.

Q. Is she related to Hawkins in any way?

A. Well, I don't know.

Q. Have you seen her with Hawkins?

A. Yes.

Q. All right, so he wanted you to work with Jane, is that right?

Mr. Summers: We object to that, your Honor. She didn't say that he wanted her to work anywhere.

The Court: Let her make the statement.

The Witness: He asked me if I wanted to.

By Mr. Froeb:

Q. To work with Jane?

A. Yes.

Q. Did you know what that meant?

A. Well, yes.

Q. Did you ask him again what it meant?

A. Well, it was just as a prostitute.

Q. All right, and you knew that, did you understand from the conversation that you were to work with Jane as a prostitute?

Mr. Summers: I object to that as leading, your Honor.

[fol. 9] The Court: Yes, sustained.

By Mr. Froeb:

Q. What did you understand then specifically from that conversation?

A. What did I understand?

Q. Yes, what was your understanding?

A. Well, that I was supposed to, I was to come up here in Tulsa and work in a hotel, what they call it.

Q. As a prostitute?

A. Yes.

Q. Now you had this conversation then prior to making this trip, is that right?

A. Yes.

Q. Did you make the trip right away after the conversation?

A. Yes.

Q. The same day?

A. Well, I don't remember whether it was the same day or not we left.

Q. Was it within a day after?

A. Yes, something like that.

Q. At the longest, within a day after, is that right?

A. (Nods affirmatively.)

Q. All right. Will you tell us—I take it you had this—you testified, did you not, that you had this conversation there in the Beachland community some place?

A. No, it was around Dogpatch.

Q. It was around Dogpatch?

A. Uh huh.

Q. Specifically, can you remember just where it was that you had the conversation?

A. No.

Q. Well, now, did you leave, did you plan to leave with Hawkins then right after that conversation?

A. Yes.

Q. Where did you first go?

A. We went first to Mom and Dad's and picked up my clothes.

Q. Mom and Dad's, that's your house?

A. Yes.

Q. Were you living there with your Mom and Dad?

A. Yes.

Q. And you picked up your clothes?

A. Yes.

Q. Now who was at the house when you picked up your clothes?

A. Mom and Daddy and the children.

Q. Did you have a conversation with your father?

A. Yes.

Mr. Summers: Object to that, your Honor.

The Court: Yes.

[fol. 10] Mr. Froeb: I haven't asked what the conversation was, your Honor.

Mr. Summers: Your Honor please, the conversation isn't admissible.

The Court: The conversation, of course, what was said isn't admissible, but the fact that she had a conversation with her father is admissible.

By Mr. Froeb:

Q. Did you have a conversation with your father?

A. Yes.

Q. What is his name, please?

A. L. V., L. V. Moudy.

Q. L. V. Moudy. I take it you went into the house to get your clothes?

Mr. Summers: Your Honor, I object to that.

The Court: Yes, sustained. Don't lead the witness.

By Mr. Froeb:

Q. You testified that you went into the house to get your clothes, is that correct?

A. Yes.
Q. Now where was Hawkins at this time?
A. In the car.
Q. What kind of a car is that, Lola?
A. Cadillac.
Q. Cadillac. Can you describe the upholstery on the Cadillac?
A. It's leopard skin.
Q. Are there any other marks or identifications on the Cadillac?
A. His name is wrote across the back seat.
Q. His name?
A. "Hawk".
Q. "Hawk". Now did your father know that Mr. Hawkins was outside?

Mr. Summers: Object to that, your Honor.
The Court: Sustained.

[fol. 11] By Mr. Froeb:

Q. Did Hawkins talk to your father?
A. No.
Q. Did you tell your parents where you were going?
A. I told my Mom I was going to Vernon, Texas, down where my cousin's at.
Q. And you didn't tell them you were going to Tulsa, is that right?
A. No.
Q. What was your reason for doing that?

Mr. Summers: Object to that.
The Court: Sustained.

By Mr. Froeb:

Q. Did you then go up, did you then get back in the car with Hawkins?
A. Yes.
Q. And where did you go next?
A. Well, we, that's when we started.
Q. All right. What was the first stop, then?

A. We stopped at his cabin and he picked up some clothes.

Q. Where was that?

A. Hatfield.

Q. Hatfield?

A. Arkansas.

Q. Did you stop at Mena, Arkansas?

A. Yes.

Q. And what happened, where was it in Mena that you stopped?

A. It was a station right by the bus station.

Q. And did anything happen there at the station that you remember?

A. He put a headlight in the car.

Q. Put a headlight on the car?

A. (Nods affirmatively.)

Q. All right, now then from Mena, where was the next stop after Mena, Arkansas?

A. Muskogee.

Q. Muskogee. What happened there?

A. We stopped and ate.

Q. Where was it that you ate?

A. I didn't know the name of the place. It was outside of town a little ways, wasn't right in Muskogee.

Q. What kind of a place was it?

A. Well, it was just a place to eat, and they danced in there, and it was colored and white people both in there.

Q. Night club, would you call it a night club?

[fol. 12] A. Well, you might call it that.

Q. Now you testified that you ate dinner there, is that correct?

A. Yes.

Q. And then what happened after that?

A. We came here to Tulsa.

Q. All right, now about what time was it when you hit Tulsa?

A. I don't know. It was after midnight, along towards daylight.

Q. And where did you stop here in Tulsa?

A. At a filling station.

Q. And did Hawkins get out of the car?

A. Yes.
Q. And what did he do after he got out of the car?
A. Made a phone call.

Mr. Summers: Object unless she knows.
The Court: Do you know what he did?
The Witness: Made a phone call.

By Mr. Froeb:

Q. He made a phone call?
A. Uh huh.
Q. All right, and did he say anything to you after he made the phone call?
A. Not that I remember.
Q. All right, then what happened after that?
A. Jane and Tommie came down there.
Q. Now who is this "Jane" again?
A. Jane Wilson.
Q. Jane Wilson; who is Tommie?
A. I don't know what her last name is.
Q. All right, now how long was it that Jane and Tommie showed up after Hawkins made the call?
A. Well, I don't know how long it was. It was just a short while, though.
Q. Well, can you estimate it to the jury, was it an hour or a half hour?
A. About half an hour, I guess.
Q. About a half hour. Then tell the jury what happened then, will you, Lola?
A. Well, I got in the car with them, and we started back towards town and we stopped at a restaurant, drank a cup of coffee, and then we rode back to the Corona Hotel.

Mr. Summers: I object to that, your Honor. The defendant wasn't present at that time.
[fol. 13] Mr. Froeb: Well, if the Court please——
The Court: She is just telling what they did. Overruled.

By Mr. Froeb:

Q. Now you say you went to the Corona Hotel, is that correct?

A. Yes.

Q. Now did you register in the Corona Hotel?

A. No.

Q. Now where did you stay in the Corona Hotel?

A. In the room with Jane.

Q. In a room with Jane?

A. Yes.

Q. Now can you tell us what happened while you were in that room?

A. Well, Tommie was in there with us for a little while but she went on into her room. She had a room there, too, and then me and Jane talked.

Q. All right.

The Court: Stand back so she can talk louder, Mr. Froeb.

By Mr. Froeb:

Q. Can you tell us what Jane did to you or can you tell us anything, give us any detail of what happened in Jane's room?

A. Well, she was just telling me how to act when I went into a room, how much to charge for dates, what kind of dates they was.

Q. Did Tommie do anything to you while you were in the room?

A. She arched my eyebrows is all.

Q. How long did you stay in Jane's room?

A. Well, the rest of the night.

Q. Well, how many hours was that, approximately?

A. I don't know. Probably five hours, five or six hours, something like that. I don't know.

Q. Then what did you do the next morning, Lola, can you tell us that?

A. Went over to the Bliss Hotel and registered.

Q. You went into the Bliss Hotel?

A. (Nods affirmatively.) Uh huh.

Q. And registered?

A. (Nods affirmatively.)

[fol. 14] Q. All right, now I take it you registered; let me ask you, did you register with the desk clerk?

A. Yes.

Q. Then after you registered with the desk clerk, what did you do?

A. Well, I talked with one of the porters and went up to my room.

Q. Do you know what his name was?

A. No.

Mr. Summers: I object to that, your Honor. It's after the transaction, the defendant was not present.

The Court: Overruled.

Mr. Froeb: I have a case directly in point on that.

The Court: Overruled.

By Mr. Froeb:

Q. You say you talked with one of the porters, is that right?

A. Yes.

Q. All right. Now did you go into a room?

A. Yes.

Q. What did you do while you were at the Bliss Hotel, will you tell the jury that?

A. Well, I filled a few dates there for a couple or three nights, just about two nights, I guess.

Q. Let me ask you, by "dates", you mean being a prostitute?

Mr. Summers: Your Honor please——

The Court: All right, let her tell what she means.

By Mr. Froeb:

Q. What do you mean by "dates"?

A. Well, it's a prostitute.

Q. Now were you arrested while you were at the Bliss?

A. Yes.

Q. What did you do when you got arrested?

A. Well, they took me up to the station.

Q. All right.

A. I didn't have any money so I called up the Corona Hotel. Jane wasn't there. I told the—the porter sent Tommie down.

Q. And what happened then? Did Tommie come down [fol. 15] to the station?

A. Yes.

Q. Did she pay your fine?

A. Yes.

Q. How much was the fine?

A. $25.00.

Q. Then what happened? Did you go back to the Bliss?

A. Yes.

Q. All right, did you fill any more dates while you were at the Bliss?

A. No.

Q. Now after—when did you leave the Bliss?

A. I think it was about the 28th.

Q. About the 28th of November?

A. Yes.

Q. All right. Now did you go any other place after you left the Bliss?

A. Yes, went down to the Ruby Rooms.

Q. Dixie Rooms?

A. Well, they are right there together.

Q. What's that?

A. They are right there together, it's the Ruby Rooms.

Q. Is that on First Street here in Tulsa?

A. Yes.

Q. Now what did you do when you went into the Dixie Rooms?

A. I worked there about one night, I guess, filled a couple of dates.

Q. You filled a couple of dates there. Then did you check out of the Dixie Rooms?

A. Yes.

Q. All right, how many days was this after you checked out of the Bliss that you checked out of the Dixie or Ruby Rooms?

A. I don't remember, just a day or two.

Q. A day or two?

A. I don't remember exactly.

Q. Did you leave Tulsa then?

A. Yes.

Q. All right, now let me ask you another question:

Before you went to the Bliss Hotel, did you go to the doctor here in Tulsa?

Mr. Summers: I object to that.

A. (The Witness) Yes.

Mr. Summers: Incompetent, irrelevant and immaterial.

Mr. Froeb: Your Honor please, it goes to prove intent and purpose of the trip.

The Court: Don't make remarks before the jury.

(There was a brief conference at the bench out of the hearing of the reporter and the jury.)

[fol. 16] The Court: All right, the objection will be overruled. Go ahead and answer. Can you talk a little louder, and don't nod your head. The reporter has to take your statement. It has to be in words.

By Mr. Froeb:

Q. Now my last question I asked you, Lola, was: Did you go to the doctor?

A. Yes.

Q. Now was that before you checked into the Bliss?

A. Yes.

Q. And were you examined by the doctor?

A. Yes.

Q. And what kind of an examination did he give you?

A. A blood test.

Q. All right, thank you. Now we will jump back now to where we were at the Dixie Rooms. You testified that you left the Dixie Rooms, is that correct?

A. Yes.

Q. Did you leave Tulsa then?

A. Yes.

Q. And that was, you testified, did you not, that that was approximately the 28th or 29th, is that correct, of November?

A. About the 29th.

Q. Where did you go from Tulsa?

A. Fort Smith.

Q. And who went with you?

A. Jane and Tommie.

Q. Now what kind of a car was it that you went in?

A. '55 Ford, convertible.

Q. Who did it belong to, who did the car belong to?

A. Well, I suppose it belonged to Jane.

Q. Now what happened when you got to Fort Smith, Arkansas?

Mr. Summers: Your Honor, I believe I'll object to this line. It's five or six days afterwards.

The Court: Well, overruled. Go ahead.

By Mr. Froeb:

Q. What happened when you got to Fort Smith?

A. Well, we stopped there and they called a hotel—they called a hotel there.

Q. Who did?

A. Well, I don't know which one called.

Q. Well, I know, but who made the call, was it Jane or Tommie?

A. I don't know which one made it.

[fol. 17] Q. Did you see either one of them make the call?

A. No.

Q. Do you know for a fact that they did call?

A. No, I wouldn't, I wouldn't say.

Q. Now this was after you got to Fort Smith?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now did Hawkins show up soon thereafter?

A. Yes.

Q. How long after you got to Fort Smith did he show up?

A. The next day.

Q. And where did you see him in Fort Smith?

A. Outside of town.

Q. Outside of town?

A. Yes.

Q. Was it a cafe or filling station, or where was it?

A. Well, it was a cafe, a tavern.

Q. Now who was present when you saw Hawkins this next day, who was present in the group?

A. Jane and Tommie.

Q. Jane and Tommie?

A. Yes.

Q. And you and Hawkins, is that correct?

A. Yes.

Q. All right. Did you talk to Hawkins there, did you talk to him there at the cafe?

A. No.

Q. Was there a conversation there when you met at the cafe?

A. Well, I was going to leave Fort Smith and go back.

Q. Well, let me just go a little slower here.

The Court: Stand back so she will talk out.

By Mr. Froeb:

Q. You met at a cafe, you and Tommie and Jane Wilson, is that correct?

A. Yes.

Q. That's your testimony. And you were present there and Jane was there, Tommie was there, and that was where Hawkins met you, is that correct?

A. He was done (sic) there when we got there.

Q. He was there when you got there?

A. Yes.

Q. Now the next question I want to ask you is this: Was there a conversation when all four of you were present at the cafe?

A. No.

Q. Wasn't anything said at all?

A. Well, we talked. It wasn't anything I can remember.

[fol. 18] Q. All right, but you did have a conversation?

A. Yes.

Q. All right, now did you talk to Hawkins at all in the cafe?

A. Well, I might have, but I don't remember what I said to him.

Q. What was the next thing you did after you left the cafe?

A. Well, I left, I went back with him. Jane and Tommie went back, and I went on with Hawkins.

Q. Oh, you went on with Hawkins?

A. Yes.

Q. All right, where did you want to go?

A. Well, I didn't exactly know where I wanted to go. I don't know. I told him I hated to give it up, and so I was going to try it again, some.

Q. You said you hated to give it up?

A. I hated to give up, yes.

Q. And you'd try again?

A. Yes.

Q. Where did you go after you left Fort Smith? Where was the next stop?

A. Hot Springs.

Q. Hot Springs?

A. Uh huh.

Q. Now where did you stay at Hot Springs?

A. In the Jack Tarr Courts.

Q. Jack Tarr Courts?

A. (Nods affirmatively.)

Q. All right, did you spend the night with Hawkins there?

A. Yes.

Mr. Summers: Object to that, your Honor, incompetent, irrelevant and immaterial in this case, prejudicial.

The Court: Overruled.

By Mr. Froeb:

Q. All right, now, so you spent one night at the Jack Tarr Courts at Hot Springs, is that right?

A. Yes.

Q. Now did you visit any other hotel in Hot Springs, did you go to another hotel?

A. The next morning.

Q. The next morning?

A. Yes.

Q. All right, what hotel was that, Lola?

A. Valley Motel.

Q. Valley Motel?

A. (Nods affirmatively.)

Q. Why did you go there?

A. I was going to work there.

Q. You were going to go to work?
A. Yeah.
Q. Did you work there?
A. No.
[fol. 19] Q. Well, did you change your mind?
A. Yes.

Mr. Summers: Object to that as leading.

Q. All right, then did you register in the Valley Motel?
A. No.
Q. You didn't?
A. No.
Q. What did you do?
A. Well, I went in there, but——
Q. All right.
A. Then I left, and I went and called a taxi to the bus station, went to the bus station and caught a bus and went home, back to Mom and Dad.
Q. Did you have enough money to buy a bus ticket?
A. Yes, I had one cent left after I got the bus ticket.
Q. And you took the bus back home, is that right?
A. Yes.
Q. Now when you were up in Tulsa and you registered in the Bliss Hotel, did you use your—what name did you give them at the Bliss?
A. Johnnie McGuire.
Q. Johnnie McGuire. Now who suggested that name to you?

Mr. Summers: I object to that, your Honor.
The Court: Yes.
Mr. Froeb: All right, I'll withdraw the question, your Honor.

By Mr. Froeb:

Q. Where did you get that name from?
A. Well, he thought it up.
Q. He thought it up?
A. Yes.
Q. Who do you mean by "he"?
A. Hawk.
Q. Hawkins?

A. (Nods affirmatively.)

Q. The defendant here?

A. Yes.

Q. Was there any conversation between you and Hawkins regarding where you were going to stay when you came up to Tulsa, specifically?

A. Well, no, not that I remember of.

Mr. Froeb: All right, you may examine.

[fol. 20] Cross examination.

By Mr. Summers:

Q. This community where you live is down near Mena, Arkansas, isn't that right?

A. Well, it's in Oklahoma but it's close to Mena, yes.

Q. Across the line. The post office, I believe, is Cove, Arkansas?

A. There is a post office at Hatfield.

Q. Post office at Hatfield, you say?

A. Yes, there is.

Q. Prior to this time, you had had experience working in taverns, hadn't you?

A. In taverns, yes.

Q. Where had you worked in a tavern before?

A. At Dogpatch, at Nichols Place.

Q. Well, before that, had you worked at a tavern in Texas?

A. I haven't.

Q. What kind of work was it in Texas?

A. I worked at the cafeteria there at the Imperial Cafe.

Q. Where?

A. In Vernon, Texas.

Q. In Vernon, Texas. How long did you work there?

A. I don't know exactly how long it was, about a month.

Q. Then you came back to this community that you referred to as Dogpatch, across from Mena?

A. Yes.

Q. You say you worked in a tavern?

A. Yes.

Q. What were your duties, what did you do?

A. Well, I just worked behind the counter, selling beer.

Q. Who was the proprietor of that, what was his name?

A. Nichols.

Q. George Nichols?

A. Well, I know him as Ralph. I guess it's the same person.

Q. And then did you work for Mr. Hawkins at his place?

A. No.

Q. How long did you work at Mr. Nichols' place?

A. I don't know. I worked there two or three different times, just off and on.

Q. Then I believe you testified that you asked Mr. Hawkins about getting a better job?

A. Yes, I was talking to him about getting a different job, yes, I was.

Q. How many times did you talk to him about getting a job, do you know?

A. No.

Q. What did you say that he said about your getting a job in Tulsa, what was the language that you used a while [fol. 21] ago, what did he say?

A. I said, he said that I could work up there in Tulsa, wanted me to work up there in Tulsa with Jane.

Q. Did you know who Jane was?

A. Well, no, not exactly.

Q. You do now, don't you?

A. Yes, I do.

Q. She was his wife, separated from him, isn't that right; did you know about that?

A. I don't know anything about their personal life at all.

Q. Well, you came then to Tulsa?

A. Yes.

Q. From Oklahoma, through Mena, Arkansas?

A. Yes.

Q. Through Fort Smith?

A. Yes.

Q. And it was in the nighttime, I believe, when you got here?

A. Yes.

Q. Do you know where the filling station was that you testified about that you stopped?

A. No, I don't know where it's at.

Q. And then this woman that was known as Jane——

A. Yes.

Q. (Continuing) —and another one came?

A. Yes.

Q. And you left?

A. Yes.

Q. When was the next time you saw defendant Hawkins after that?

A. It was down at Fort Smith.

Q. How many days, would you say?

A. Well, I wouldn't say, because I don't know.

Q. Ten, was it ten days?

A. No, it wasn't ten days.

Q. It wasn't that long?

A. No.

Q. How long did you stay in Tulsa altogether, young lady?

A. Well, I got here about the 23rd, I think, and left about the 28th or 29th.

Q. You went to the Bliss Hotel, I believe—no, I believe you said that these two women took you to another hotel. What hotel was that?

A. Corona.

Q. Stayed all night?

A. Yes.

Q. And one of them prettied you up and straightened up your eyebrows?

A. Yes, Tommie did.

Q. Tommie did that. Now that's not uncommon practice for young ladies?

A. No.

Q. Nothing unusual about that. Good women have their eyebrows cleaned up just the same as bad women, isn't that right?

A. That's right.

Q. And then you went to another hotel?

A. Yes.

Q. Do you know which one of the women over there it [fol. 22] was that suggested that you go to another hotel?

A. No. I don't know whether I thought of it or they thought of it. I wouldn't say.

Q. To refresh your recollection, wasn't it Jane that suggested you go to another hotel?

A. Well, it might have been but I wouldn't say for sure.

Q. Now while you was at the Bliss Hotel, did you see Mr. Hawkins at all?

A. No.

Q. None of this time that you was in Tulsa after you left him at the filling station, did you see him, have any conversation with him until you saw him again in Fort Smith?

A. No, I didn't see him.

Q. Less then ten days afterwards?

A. No, I didn't.

Q. About how many dates do you think you filled in Tulsa, would you say?

A. Oh, I don't know, probably about three.

Q. Altogether?

A. (Nods affirmatively.)

Q. You got money for it, got money for those dates?

A. Yes.

Q. Did you ever give Mr. Hawkins any money?

A. No.

Q. Did you ever give Jane any money?

A. No.

Q. Did Mr. Hawkins ever suggest that you give him any money?

A. No.

Q. Did you ever give him any money for any purpose?

A. No.

Q. After you got back to Fort Smith and you wanted to go down to Hot Springs, I believe, do you know whether or not you had a conversation with Mr. Hawkins there about his wife hustling up here in Tulsa?

A. No.

Q. Do you remember such a conversation, remember giving him information?

A. About Jane?

Q. That Jane was plying the profession of prostitution in Tulsa?

A. You mean me telling him that Jane did?

Q. Yes, uh huh.

A. No.

Q. You are married, I believe?

A. Yes, I am.

Q. Where do you live?

A. Salem, Oregon.

Q. Is your husband here with you?

A. Yes.

Q. Did he discuss, when you were on your way up her that he was on his way to Oklahoma City about a busine deal?

A. Well, if he did I don't remember it.

[fol. 23] Q. You don't remember that?

A. No, seems like he said something about going Mississippi or somewhere. I don't remember.

Q. In other words, about going somewhere, Mississip was the way you understood it?

A. I don't remember. I wouldn't say for sure wher but——

Q. Didn't this occur: Didn't he tell you he was on h way to Oklahoma City, and was bringing you by Tulsa get a job with his wife?

A. No, he didn't. It didn't occur to me that he was goi to Oklahoma City, but he was bringing me up here.

Q. For his wife to get you a job?

A. Yes.

Q. She got you one, didn't she?

A. Yes.

Q. I believe you testified about spending the night dow in Arkansas?

A. Yes.

Q. With this defendant?

A. Yes.

Q. Did he give you any money for that?

A. No.

Q. Did he ever give you any money for any immor purpose?

A. No.

Q. I believe you said you never gave him any proceeds payment of your——

A. (Interposing) No, I didn't.

Q. (Continuing) —prostitution. Did you ever give an one, did you ever give any of these other women?

A. No.
Q. Did you give Jane any?
A. No.
Q. Or the other woman?
A. No.

Mr. Summers: That's all.

Redirect examination.

By Mr. Froeb:

Q. I have a few more questions, Lola: When you were at the Bliss did you not in fact receive a telephone call from Hawkins?
A. Yes.
Q. All right, and do you remember what was said in that telephone conversation?
A. He just asked me how I was getting along, and just nothing.
Q. Okay. Now do you know as a fact Jane and Tommie were prostitutes?
A. Well, I never had saw it.
Q. After you met them did you know that?
A. Yes.
Q. Now I want to ask you this question: Did you get married after this trip or before you made the trip?
[fol. 24] A. Did I—I got married afterwards.
Q. To Mr. Boyd?
A. Yes.
Q. Now you said you were born in 1938. Tell the jury how old you actually were at the time of this trip, that's November.
A. 17.

Mr. Summers: Your Honor please, that's repetition. He has gone over that.
The Court: I don't know. Overruled. Go ahead. Tell them how old you were.
The Witness: 17.

By Mr. Froeb:

Q. And when did your 18th birthday occur?

A. August 28th of this year.

Q. Of this year?

A. (Nods affirmatively.)

Q. One other question, Lola: Do you know whether this Nichols—you stated you worked for him, is that correct?

A. Yes.

Q. Do you know whether he's a good friend of Hawkins?

A. No, I don't know.

Q. I think I asked that before—have you ever seen them together?

A. Yes, just in the tavern together.

Q. I see. Did Nichols run this tavern that you worked at a few times?

A. Yes.

Q. And did Hawkins own the other tavern, did you work in the other tavern?

A. I never did work where Hawkins was.

Q. No, I'm asking you, if you know of your own knowledge, whether or not Hawkins ran the other tavern in Dogpatch?

A. Well, yes.

Q. And how many taverns are there in Dogpatch?

A. Two.

Q. Just two. In fact they are the only buildings there, aren't they?

A. All except a house.

Mr. Froeb: Okay, thank you.

The Court: All right, anything else, Mr. Summers? All right.

[fol. 25]

TOMMIE ALEXANDER, called as a witness on behalf of the plaintiff, testified:

Direct examination.

By Mr. Froeb:

Q. Will you state your name to the jury, please?

A. Tommie Alexander.

The Reporter: I'm sorry, I couldn't hear you.
The Witness: Tommie Alexander.

By Mr. Froeb:

Q. Do you live here in Tulsa?

The Court: Can you get back a little so that she will talk louder? Have to talk loud here, we have so much noise and confusion. You have to talk real loud. Go ahead.

By Mr. Froeb:

Q. Do you reside here in Tulsa now?
A. No, I live in Muskogee, Oklahoma.
Q. Were you in Tulsa during November, 1955?
A. Yes, sir.
Q. Where were you staying, Tommie?
A. The Corona Hotel.
Q. All right. Now did you know a person during November of 1955 by the name of Johnnie?
A. Johnnie, yes.
Q. All right, when did you first meet her?
A. When did I first meet her?
Q. Yes, just tell us in your own words.
A. Well, I don't remember the date. It was sometime in November.
Q. November of '55?
A. Uh huh.
Q. And where was it that you met her?
A. Where did I meet her?
Q. Uh huh.
A. I met her at the hotel.

The Court: Will you please stand back? She gets to talking soft and the jurors can't hear her.

[fol. 26] By Mr. Froeb:

Q. Can you tell us a little more specifically where it was you first met her?
A. Where I first saw her was at a service station.
Q. All right. Where was that, Tommie?
A. It was on the Sapulpa highway.

Q. And was it nighttime or daytime?

A. Well, I think it was about 3:00 or 4:00 in the morning.

Q. Can you tell us whether it was during, or the middle of November or towards the end of November, or when was it during November?

A. I don't remember.

Q. Can you give us your best recollection? Would you say it was after the middle of November?

A. It could have been.

Q. How was it that you happened to go out to a service station at 2:00 or 3:00 o'clock in the morning, would you tell the jury that?

A. Well, a friend of mine asked me to ride out with her.

Q. What was that friend's name?

A. Jane Wilson.

Q. Okay. She asked you to ride out there?

A. Yes, sir.

Q. And did she know how to get out to this service station?

A. Did she know how?

Q. Uh huh.

A. No, she didn't know the town too well. I used to live here, and I knew it.

Q. Well, did she ask anyone, did Jane ask anyone for directions as to how to get out there?

A. Did she ask anyone?

Q. Yes.

A. Me, she asked me. I mean, that's why she wanted me to go with her.

Q. Did she say why she was going out, why she wanted to go out to the service station?

Mr. Summers: Object to that, your Honor.

The Court: Sustain the objection.

By Mr. Froeb:

Q. Why was it that you went out to the service station?

A. Why did I go out there?

Q. (Nods affirmatively.)

[fol. 27] A. Because she asked me to go with her.

Q. All right, and did you go out there?

A. Yes, sir.

Q. And you testified that that's where you first saw this Johnnie McGuire, is that right?

A. Yes, sir.

Q. All right, tell us what happened while you were out there at that service station, will you?

A. What happened?

Q. Just describe to us what happened while you were out there.

A. Well, she got out of the car and came over to the car we were in and got in.

Q. Was there anybody else there besides Johnnie McGuire?

A. Jane was there.

Q. Who else was there?

A. Well, I don't know. There was someone in a car.

Q. Was it a man or a woman?

A. It was a man.

Q. All right, do you know what kind of a car it was?

A. I think it was a Cadillac.

Q. All right, do you remember anything else about it?

A. No, it was a light color.

Q. Do you remember, for instance, what the upholstery looked like?

A. No.

Q. Then what did you do after this Johnnie got in the car?

A. We went back to the hotel.

Q. Now whose car was that that you were driving?

A. It was Jane's.

Q. Jane's?

A. As far as I know.

Q. All right, now tell us, Tommie, what happened when you got back to the hotel.

A. What happened?

Q. Yeah.

A. Oh, we sat around and talked a little while and I went to bed.

Q. All right, what hotel was it?
A. Corona Hotel.
Q. All right. Are you a prostitute, Tommie?
A. I was. I have been.
Q. Were you during November of 1955?
A. Yes, sir.
Q. Was Jane a prostitute?
A. I don't know.
Q. Well, Tommie, do you know what relation Jane bears to the—all right, withdraw that. Do you know if Jane Wilson is married?
A. Do I know if she's married?
Q. (Nods affirmatively.)
A. I don't know for sure.
Q. Now did you do anything to this Johnnie McGuire while she was at the Corona that night?
A. Did I do anything?
[fol. 28] Q. Uh huh.
A. Yeah, arched her eyebrows.
Q. What was the purpose of doing that?
A. I don't know. They needed arching.
Q. Were you trying to make her more attractive?
A. No.
Q. Now did you leave the Corona Hotel around the end of November?
A. Did I leave?
Q. Yes, did you leave out of Tulsa?
A. I don't remember. It was, might have been in December, the first of December. I don't remember exactly.
Q. But you did leave Tulsa around that time?
A. Yes, sir, I did.
Q. And who was with you when you left Tulsa?
A. Who was with me?
Q. Yes.
A. Jane and this Johnnie.
Q. And did you leave Tulsa by car?
A. Yes, sir.
Q. Whose car was it?
A. It was Jane's.
Q. What kind of car is that again, Tommie?
A. Well, it's a Ford convertible.

Q. Do you remember the color?
A. I think it was green and white.
Q. Do you remember the year?
A. It was a new car.
Q. And where did you go when you left Tulsa?
A. Went to Fort Smith.
Q. After you got to Fort Smith—let me ask you this: How long did it take you to get to Fort Smith? Did you get there in a day, for instance, or two days?
A. Oh, took about three or four hours, I think.
Q. Three or four hours?
A. It's about 200 miles down there, isn't it?
Q. All right, now what happened when you got down to Fort Smith?
A. What happened?
Q. Yes, uh huh.
A. Well, I went to the Broadway Hotel and I rented me a room.
Q. You got a room?
A. Yes, sir.
Q. And when was, was that the last time you saw Johnnie McGuire?
A. Yes, sir.

Mr. Froeb: You may examine, Mr. Summers.
Mr. Summers: No questions.
The Court: All right, you may step down.
[fol. 29]

HAROLD SMITH, called as a witness on behalf of the plaintiff, testified:

Direct examination.

By Mr. Froeb:

Q. State your name again.
A. Harold Frederick Smith.
Q. Where do you work, Mr. Smith?
A. I'm extra waiter at the Country Club.
Q. Now during November of 1955, where did you work?
A. Corona Hotel.

Q. And what was your job there, Harold?
A. Clerk and porter.
Q. Porter?
A. Yes, sir.
Q. Did you know a woman named Jane Wilson?
A. Yes, sir.
Q. Drawing your attention to the latter part of November, 1955, did you receive a, did you have occasion to talk to Jane Wilson?
A. Yes, sir.
Q. All right, do you know what she asked you?

Mr. Summers: I object to that, your Honor.
The Court: Yes, sustained.
Mr. Summers: For the purpose of the record, I want to object, let me have a general objection to all this line of testimony.
The Court: All right.
Mr. Summers: I'll not make any further objections.
The Court: Well, of course I don't know how much of this line there is going to be. Any conversation out of the presence of the defendant is not admissible.

By Mr. Froeb:

Q. Do you know Tommie Alexander?
A. Yes, sir.
Q. Now this Jane Wilson and Tommie Alexander, do you know them to be prostitutes?
A. Yes, sir.

[fol. 30] Mr. Summers: I think that's incompetent.
The Court: Overruled. Go ahead. Do you know?
The Witness: Yes, sir.

By Mr. Froeb:

Q. Do you know them to be prostitutes?
A. I think so.
Q. Did they stay at the Corona Hotel during November of 1955?
A. Yes, sir.
Q. All right. Directing your attention to the latter

part of November, do you recall Jane and Tommie leaving the hotel late at night together?

A. It was in the morning.

Q. Well, all right, was it—tell us what time of morning it was.

A. Oh, 5:30, 6:00 o'clock, something like that.

Q. Could it have been 2:00 o'clock or 3:00 o'clock?

Mr. Summers: Wait a minute. I object to that.

The Court: Yes, sustained.

By Mr. Froeb:

Q. All right, now you do recall them leaving the hotel together early in the morning, or sometime during the morning, is that correct?

A. Yes.

Q. Do you recall that they came back with anyone?

A. Yes, sir.

Q. And do you know who that person was they came back with?

A. Yes, sir.

Q. What was her name?

A. Johnnie, I believe that's what she said her name was. I don't know.

Q. And your testimony is that they told you her name was Johnnie?

A. Yes, sir.

Mr. Summers: Object to that. He didn't testify to that.

The Court: Yes, what somebody told him would not be admissible, and ladies and gentlemen of the jury, you will not regard that testimony.

[fol. 31] By Mr. Froeb:

Q. You knew this girl's name to be Johnnie, did you?

A. Only what they said. I don't know what her name was.

Q. Did Johnnie check into the hotel?

A. No, sir.

Q. Where did she stay, Harold?

A. She visited with the girls a few hours. I don't know

where she, when she left I don't know where she stayed after that.

Q. Do I understand your testimony to be that she stayed——

Mr. Summers (Interposing): I object to that.

The Court: Sustained. Not what you understand.

By Mr. Froeb:

Q. Do you know where she stayed in the hotel, this Johnnie?

A. She didn't check in because I was on the desk.

Q. Did she stay in the hotel?

A. She visited those girls a few hours, she didn't check in the hotel.

Q. She visited with the girls?

A. Yes.

Q. She visited with those girls?

A. I got off duty at 8:00 o'clock.

Q. Do you know of your own knowledge that this Jane had received a telephone call at the Corona Hotel on this night that you testified about, prior to her leaving with Tommie?

A. Yes, sir, she did, because I answered the phone.

Q. What was that?

A. She received a call, because I answered the phone.

Q. You answered the phone?

A. Yes, sir.

Mr. Froeb: You may examine.

Mr. Summers: No questions.

The Court: All right, you may step aside.

[fol. 32]

L. V. Moudy, called as a witness on behalf of the plaintiff, testified:

Direct examination.

By Mr. Froeb:

Q. Will you state your name to the jury, please?

A. L. V. Moudy.

Q. And where do you live, Mr. Moudy?
A. My home is at Hatfield, Arkansas.
Q. And have you lived in the Beachland community?
A. Yes.
Q. Oklahoma?
A. Yes. That's where I live. Hatfield is just my address, see, out of Arkansas.
Q. How far is that from the Arkansas line?
A. About six miles, I would say, five or six.
Q. Do you have a daughter named Lola Fay Moudy?
A. Yes.
Q. Now directing your attention to the latter part of November of 1955, did your daughter take a trip on that occasion?
A. Yes.
Q. And do you know who it was she took the trip with?
A. I just know who she told me it was.
Q. And who was it?

Mr. Summers: Object to that.
The Court: Sustained.

By Mr. Froeb:

Q. Did you see a car outside of your house?
A. Yes.
Q. Do you know whose car that is?
A. All I know is what she told me.
Q. Well who, what is your understanding——

Mr. Summers: Wait a minute.
The Court: No, no, sustained, what his understanding is.

By Mr. Froeb:

Q. Will you describe the car to the jury?
[fol. 33] A. The best I could tell about it, it was a big car and light colored.
Q. Did you notice the upholstery on the car?
A. No, never noticed.
Q. Do you know what make of car it was?
A. Really I don't.

Q. It was a big car, though?
A. Yeah.
Q. Now did Lola get her clothes on that occasion?

Mr. Summers: Object to that as leading.
The Court: Yes, don't lead the witness.

By Mr. Froeb:

Q. What did your daughter do—let me start over: Was your daughter at the house when this car was outside?
A. Yes.
Q. All right, what was she there for?
A. She got her clothes.
Q. She got her clothes?
A. Uh huh.

Mr. Froeb: All right, you may examine.
Mr. Summers: No questions.
The Court: All right, you may step down.

SHERMAN HOLLOMAN, called as a witness on behalf of the plaintiff, testified:

Direct examination.

By Mr. Froeb:

Q. Will you state your name, please?
A. Sherman Holloman.
Q. Where do you live, Mr. Holloman?
A. I live in Mena, Arkansas.
Q. Mena, Arkansas?
A. Yes, sir.
Q. What do you do there?
A. I work in a service station.
Q. Do you know the defendant in this case, James C. Hawkins?
A. Well, I don't know how to answer that.
Q. What's that?
A. I don't know how to answer it. I think I know him, [fol. 34] I'm not sure.

Q. Well, do you see him in the court room this morning?

A. Well, I'm not sure.

Q. Now directing your attention to November of 1955, did you have occasion to repair a headlight on a car?

A. I did.

Q. And what kind of car was it?

A. It was a Cadillac.

Q. Cadillac, and do you remember anything else about this Cadillac?

A. Yes, sir.

Q. Would you tell the jury a little more about it?

A. Well, I was admiring the seat covers in it.

Q. Had orange seat covers?

A. No, sir, they was, I think they was leopard skin.

Q. Leopard skin?

A. Imitation leopard skin seat covers.

Q. Was there any name on the seat covers?

A. Yes, sir.

Q. What was it?

A. "Hawk".

Q. Now do you remember whether you repaired the headlight on this car during the middle of November or was it after the middle of November?

A. Well, I don't really know about that. I repair quite a few on cars there.

Q. Can you give us your best recollection on approximately when in November that was?

A. Well, I couldn't even swear it was in the month of November, to tell you the truth about it.

Q. Well, have you ever repaired a headlight on a car such as that before?

A. Yes, sir.

Q. On that particular car?

A. Not on that one, I have on a Cadillac.

Q. That's what I mean. Have you ever repaired the headlight on that car before?

A. Well, I don't think so.

Q. All right, have you ever repaired the headlight on that car since then?

A. No, sir.

Mr. Froeb: All right. Thank you very much. You may examine.

Mr. Summers: No questions.

[fol. 35]

ERMA LANE HAWKINS, called as a witness on behalf of the plaintiff, testified:

Direct examination.

By Mr. Froeb:

Q. Will you state your name to the jury, please?
A. The name you are using or my real name?
Q. Your present name.
A. Erma Lane Hawkins.

*****

Q. Have you ever used the name Jane Wilson?
A. Yes, sir.

Mr. Summers: May I ask a qualifying question?
The Court: Yes, sir.
Mr. Summers: You say your name is Erma Lane Hawkins?
The Witness: Yes, sir.
Mr. Summers: Are you married or single?
The Witness: I'm married.
Mr. Summers: What is your husband's name?
The Witness: James Hawkins.
Mr. Summers: That's this defendant?
The Witness: Yes.
Mr. Summers: When were you married?
The Witness: July 5, '54.
Mr. Summers: Have you ever been divorced?
The Witness: From him?
Mr. Summers: From him.
[fol. 36] The Witness: No, sir.
Mr. Summers: Still his wife?
The Witness: Yes.
Mr. Summers: Are you folks living together now as husband and wife?
The Witness: No.

Mr. Summers: How long have you been separated?
The Witness: Well, we've had a previous separation.
Mr. Summers: We object to her testimony.
Mr. Froeb: Your Honor please, I haven't asked her——
The Court: Go ahead. What are you going to ask, Mr. Froeb?

By Mr. Froeb:

Q. Have you used the name Jane Wilson before?

Mr. Summers: I object to any testimony, your Honor, because she is his wife.
The Court: You gentlemen approach the bench here.

(There is a brief discussion at the bench out of the hearing of the reporter and the jury.)

By Mr. Froeb:

Q. Now you testified that you are the wife of the defendant in this case, James C. Hawkins, is that right?
A. That's right.
Q. Now during November of 1955, did you also use the name Jane Wilson, or Wilma Jane Wilson?
A. When was that?
Q. During November of 1955, last year?
A. When I was here, I believe so.
[fol. 37] Q. All right. Now will you tell us whether or not you are a prostitute?

Mr. Summers: Object to that general question, your Honor.
The Court: All right, overruled.

A. (The Witness) When, now?

By Mr. Froeb:

Q. Are you a prostitute?
A. Not now.
Q. Were you during the month of November, 1955?
A. Yes.

Mr. Froeb: You may examine.

Cross examination.

By Mr. Summers:

Q. I believe you testified on former questions that you are not living with Mr. Hawkins at this time?

A. That's right.

Q. How long did you live with him?

A. It wasn't very long.

Q. During the time you lived with him, did you engage in prostitution?

A. No, sir, I did not.

Q. Did you ever given (sic) him information that you were engaged in prostitution?

A. No, sir, he did not know it.

Q. He didn't know it?

A. No.

Q. And last November, at the time of this transaction, were you living with your husband at that time?

A. No, sir.

Redirect examination.

By Mr. Froeb:

Q. If the Court please, I'd like to ask one question: Were you a prostitute before you met your husband?

A. I worked some, yes.

Mr. Froeb: Thank you very much.

Mr. Summers: No further questions.

[fol. 38] Roy Hunt, called as a witness on behalf of the plaintiff, testified:

Direct examination.

By Mr. Froeb:

Q. Will you state your name, please?

A. Roy Hunt.

Q. And where do you live, Mr. Hunt?

A. Bliss Hotel.

Q. What is your occupation?
A. Manager of the Bliss Hotel.
Q. And how long have you been employed in that occupation?
A. Five years.
Q. Five years. Were you so employed during November of 1955?
A. Yes, sir.
Q. At my request, in response to a subpoena duces tecum, did you bring a card with you?
A. Yes, I did.

(Plaintiff's Exhibit 1, being a card, was marked for identification.)

By Mr. Froeb:

Q. I hand you what has been marked for identification as Government's Exhibit No. 1, and ask you to tell the jury and the Court what that is.

Mr. Summers: Object to that until I see it.
The Court: Let him see it first, please, sir.
Mr. Summers: We object to it, incompetent, irrelevant and immaterial.
The Court: Overruled. Go ahead.

By Mr. Froeb:

Q. Will you tell the jury what that card is, if you know?
A. This is the original registration card of the Bliss Hotel. It is a form that is used for registering the guests on their arrival. It's a record of the date arriving and the number of days that they stay.
Q. And who is the guest shown on that card?
A. Johnnie McGuire, Duncan, Oklahoma.
[fol. 39] Q. And what is the check-in date on that card?
A. Registered November 24th at 5:45 p.m.
Q. What year is that?
A. 1955.
Q. When is the check-out date?
A. The check-out date was November 27th at 11:00 p.m., which would be the night of November the 27th.

OFFER IN EVIDENCE

Mr. Froeb: I offer the exhibit, Government's Exhibit No. 1.

The Court: All right, let it be admitted.

(Plaintiff's Exhibit 1 was received in evidence.)

Mr. Froeb: You may examine, Mr. Summers.

Cross examination.

By Mr. Summers:

Q. Do you know Johnnie McGuire?

A. No, I do not.

Q. Do you know whether Johnnie McGuire is a man or a woman?

A. No, I do not.

Mr. Summers: That's all.

Mr. Froeb: That's all.

The Court: Call your next.

Mr. Froeb: If the Court please, that's all of our evidence at this time. The government rests its case.

The Court: All right.

(The following out of the hearing of the jury)

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AND OVERRULING THEREOF

Mr. Summers: Comes now the defendant at the close of the Government's testimony and moves the Court for a judgment of acquittal.

The Court: Overruled.

(The following again in the hearing of the jury)

[fol. 40] The Court: Call your first witness.

Mr. Summers: May I make a statement?

The Court: Yes, sir.

(Mr. Summers, on behalf of the defendant, makes the opening statement which he had reserved until this time.)

The Court: All right, call your first witness.

JAMES CLIFTON HAWKINS, the defendant, called as a witness in his own behalf, testified:

Direct examination.

By Mr. Summers:

Q. You are James Clifton Hawkins?
A. That's right.
Q. Defendant in this case?
A. That's right.
Q. How old are you?
A. 29.
Q. Where do you live?
A. I live in near Watson, Oklahoma, place called Dogpatch.
Q. What is your business?
A. I have one night club and one beer tavern, sir.
Q. Do you have any family?
A. Yes, sir, I do.
Q. What family do you have?
A. Two children, ex-wife.
Q. Not the woman that testified here on the witness stand?
A. No.
Q. What are the ages of the children?
A. 4 and 7.
Q. Boys or girls?
A. Both boys.
Q. Both boys?
A. Yes, sir.
Q. Do you know this girl, Lola, Lola Moudy at that time, now married, and I believe Lola Boyd?
A. Yes, sir, I know her.
Q. How long have you known her?
A. About a year, I'd say, altogether.
Q. Did you ever have any conversation with her about getting her a job anywhere?
A. Yes, sir, I have.
Q. Was she employed there in that community?
A. Had been working at a tavern there, I believe.
[fol. 41] Q. A tavern, at your tavern?
A. Not my tavern, no, sir.

Q. Whose tavern had she been working in?

A. Ralph Nichols'.

Q. What was the line of her duties there, if you know?

A. Well, serving beer.

Q. Did she have any conversation with you or make any request about a job?

A. Asked me could I get her a job where she might go to work.

Q. Did she ask you that once or more than once?

A. Well, several times.

Q. What did you tell her?

A. Well, two or three days I didn't tell her, didn't give her any answer to it. Then I had business in Oklahoma City, so I told her she could ride to Tulsa, might could work here, and I would contact my ex-wife for her.

Q. Why, what was the purpose of your bringing her to Tulsa?

A. For a job.

Q. Was your ex-wife here?

A. Yes, sir.

Q. I mean not the ex-wife, the wife, the woman that testified here; were you living with her at that time?

A. No, sir.

Q. How long had you been living apart?

A. Well, we never lived together much in two years' time.

Q. Did you know what her business was up there in Tulsa?

A. No, sir, not at the time, I didn't.

Q. Did you make any effort to find out?

A. Yes, sir.

Q. What effort did you make?

A. That's the main reason why I brought this girl up here, and got her, had my wife contact her, or her get in touch with my wife, so that I might find out if she was engaged in prostitution, since we were thinking about trying to make it again.

Q. Did you tell that young lady that you could get her a job of prostitution up here?

A. No, sir.

Q. Was that discussed with her at all?

A. No, sir.

Q. Did you find out later that your wife had been engaged in prostitution?

A. Yes, sir, I did.

Q. When did you find that out?

A. On the way from Fort Smith back.

Q. From whom did you find it out?

A. From Lola Fay Moudy.

Q. From Lola Fay Moudy. Did you ever discuss any money deals with her about any deals she had in Tulsa?

[fol. 42] A. No, sir, that wasn't my point in bringing her up here.

Q. Did she ever give you any money?

A. No, sir.

Q. Do you know whether she ever made any money or not?

A. I wouldn't know if she did or not.

Q. What was the purpose that you had when you came to Oklahoma, in addition to bringing her here?

A. Well, I was going to Oklahoma City.

Q. What for?

A. To pick up a deed to some property.

Mr. Summers: I ask that this be identified as Defendant's Exhibit 1.

(Defendant's Exhibit 1, being deed, was marked for identification.)

By Mr. Summers:

Q. I hand you Defendant's Exhibit 1 and ask you if you know what that is.

A. Yes, sir, this is the deed that I picked up in Oklahoma City.

Q. From whom did you pick it up?

A. Ralph Nichols.

Q. Had you had any business transactions with Ralph Nichols?

A. Bought this property from him.

Q. This deed is in your possession at this time?

A. Yes, sir.

Q. Where did you get it?

A. From George Ralph Nichols.

Q. Where?
A. Oklahoma City.

OFFER IN EVIDENCE

Mr. Summers: We offer this in evidence, your Honor.
The Court: Any objection?
Mr. Froeb: No objection.
The Court: All right, let it be admitted.

(Defendant's Exhibit 1 was received in evidence.)

By Mr. Summers:

Q. I note that deed is made to George Ralph Nichols.
A. Yes, sir, it is.
[fol. 43] Q. The makers, I believe the name is Johnson, is that right?
A. Yes, sir.
Q. Have you had any other deals with Johnson?
A. Yes, sir. I bought more property in the same block of land.
Q. It's really part of that, that two acres, is that right?
A. Yes, sir.
Q. Have you got the deed from Johnson?
A. No, sir, haven't got it yet.
Q. Why?
A. Payments aren't completed on the land.
Q. In other words, what was your arrangement with Johnson about that property that was made to Nichols, and the other property you had bought?
A. Nichols had never recorded his two acres, and in order to get me a deed on record, he tells me if I will pick this one up, he will make me one direct from him on the whole amount.
Q. Did you complete your transaction with George Nichols?
A. Yes, sir.
Q. How did you complete it?
A. I paid him the last $250.00 that I owed him, got the deed.
Q. Have you ever been convicted of any felony?
A. No, sir, I haven't.

Q. Have you ever served any term in any jail or penitentiary?

A. No, sir.

Mr. Summers: I'd like to offer this to the jury, your Honor.

The Court: All right.

Mr. Summers: You may take the witness.

Mr. Froeb: May I pass the Government's exhibit to the jury at this time?

The Court: Yes.

Cross examination.

By Mr. Froeb:

Q. How many prostitutes do you have working for you, Mr. Hawkins?

A. Not any.

Q. You state that you have a tavern down there at Dogpatch, is that right?

A. Yes, sir.

Q. And the other tavern is run by a man named Nichols?

[fol. 44] A. No, sir, not now.

Q. It was during November of 1955?

A. He had a tavern there, that's right.

Q. Is he a friend of yours?

A. Yes, sir.

Q. Know him pretty well?

A. Pretty good.

Q. As a matter of fact, didn't you come to Dogpatch at his insistence?

A. No.

Q. Did you come at his invitation?

A. No.

Q. How long have you been in Dogpatch, Mr. Hawkins?

A. Came there about June of last year, I believe.

Q. Why did you move to Dogpatch?

A. Had an opportunity to make a living.

Q. Doing what?

A. Running a tavern.

Q. Do you ever sell any leather goods, from Mexico, there?

A. Yes, sir.
Q. You do?
A. (Nods affirmatively.)
Q. Where did you live before you lived in Dogpatch?
A. Gregg County, Kilgore, Texas.
Q. Now you stated on direct examination that you never received any money orders from this ex-wife of yours, Jane Wilson, is that right?

Mr. Summers: I object to that. I didn't ask anything about any Jane Wilson.

Mr. Froeb: Excuse me, your Honor. I will withdraw that.

By Mr. Froeb:

Q. You testified on direct examination that you never received any money from Lola Fay Moudy or from Jane Wilson, your ex-wife, is that right?
A. I said Lola Fay Moudy, I believe.
Q. Did you ever receive any money from your ex-wife, Jane Wilson?
A. Maybe some she owed me.
Q. Do you remember getting a Western Union money order from her, last year, on November 19, 1955?
A. I wouldn't know what date, sir.
Q. Well, do you remember getting $150.00 Western Union money order during November of 1955 from Mrs. Jane Hawkins?
A. I wouldn't know how much it was.
Q. Do you recall getting a money order like that?
A. That's right.
[fol. 45] Q. What kind of a car were you driving during November of 1955?
A. Driving a '54 Cadillac coupe.
Q. Did it have leopard skin upholstery?
A. Yes, sir.
Q. Was your name "Hawk" written across the back of it?
A. Yes, sir.
Q. You still operate this bar down in Dogpatch?
A. Yes, sir.

Mr. Froeb: I believe that's all the questions I have.

Redirect examination.

By Mr. Summers:

Q. Counsel asked you about receiving some money from someone; from whom did you receive?

A. From my wife.

Q. All right, what was that for?

A. We had had trouble a short time before, and she taken some cash register money, but then she sent it back to me.

Q. I didn't understand that.

A. She took my cash register money, sir.

Q. You mean there at your place of business?

A. We had had trouble, yes, sir.

Q. How much did she take?

A. Well, around about $200.00, I believe.

Q. And what relation did this money that you received there through Western Union have to the money she taken out of your cash register?

A. Well, I just got in touch with her, told her I needed the money, you know, and she sent it back.

Q. Pay you back that debt?

A. Yes, sir.

Mr. Summers: That's all.

The Court: All right, anything further, Mr. Froeb? Any further questions?

Mr. Froeb: No, I have no further questions.

The Court: All right, you may step down.

[fol. 46] George Ralph Nichols, called as a witness on behalf of the defendant, testified:

Direct examination.

By Mr. Summers:

Q. What is your name?

A. George Ralph Nichols.

Q. Have you ever—do you live in Oklahoma, in Dogpatch now, or not—where do you live?

A. Well, I'm staying in Dallas, temporarily.

Q. Dallas, Texas?
A. Yes, sir.
Q. Have you ever had any business down at this place called Dogpatch, across the Arkansas line?
A. Yes, sir.
Q. What was that business?
A. Tavern.
Q. In November of 1955, where were you living?
A. In Dogpatch.
Q. Were you in Oklahoma City any of that time?
A. Yes, I was.
Q. I hand you a deed here that's been identified as Defendant's Exhibit 1, and ask you if you know anything about that deed.
A. Well, this is a deed that I got from Mr. Johnson on some property that I sold to Mr. Hawkins, and on the final payment this year, why then I give it to him.
Q. To whom?
A. To Mr. Hawkins. I never had had this recorded, and so I just signed it to him.
Q. That deed is made to you?
A. Yes, sir.
Q. What property is that?
A. Well, it's the property described here in McCurtain County, known as Blue Jeans Tavern now that Mr. Hawkins operates.
Q. I see, that's the tavern he operates?
A. Yes, sir.
Q. Now in November of last year, I'll ask you if he had any transaction with you, making any payments on that property?
A. Well, he paid his final payment.
Q. Where were you at that time?
A. Well, I was in Oklahoma City on Lincoln Boulevard, at Britton Road. My ex-wife operates a place there, and he came there and paid me my final payment.
Q. How much was that?
A. $250.00.
Q. All right. Then you had that deed at that time?
A. Yes, sir.
Q. What did you do with that deed?
A. I give it to him, to Mr. Hawkins.

[fol. 47] Mr. Summers: That's all.

Cross examination.

By Mr. Froeb:

Q. You've got a brother named Raymond Nichols?
A. Yes, sir.
Q. You've been married twice, haven't you?
A. Three times.
Q. Well, who was your first wife?
A. Her name was Natoma Cochran.
Q. Second wife named Gladys?
A. Gladys Naylor.
Q. You are presently married to Thelma Ginger Holcomb?
A. Right.
Q. Do you recall the summer of 1955 that you took a 14 year old girl named Carolyn——

Mr. Summers: Your Honor, I object to that.
The Court: Sustained.

By Mr. Froeb:

Q. Are you a gambler?

Mr. Summers: I object to that.
The Court: Overruled.

By Mr. Froeb:

Q. Are you a gambler?
A. Well, I have gambled some. I don't know, I wouldn't call myself a professional gambler.

Mr. Froeb: All right, thank you very much.

Redirect examination.

By Mr. Summers:

Q. Have you ever been convicted of a felony or served any term in a penitentiary?
A. Never.

Mr. Summers: That's all.
The Court: All right, step down.

[fol. 48] Mrs. James C. Hawkins, called as a witness on behalf of the defendant, having previously been duly sworn and testified as Erma Lane Hawkins, testified further:

Direct examination.

By Mr. Summers:

Q. You are Mrs. J. C. Hawkins that testified?
A. Yes, sir.
Q. It's been testified in evidence that this woman, this Moudy girl, that the night that she came to Tulsa and stayed with you and the woman named Tommie in her room, that you took her from that hotel over to the Bliss Hotel; is that right? Why did you do that?
A. Well, I'll tell you why, because she, my husband didn't know that I was working, and I wouldn't have gone and got the girl——

The Court: That isn't admissible. You could have objected to it. It isn't admissible why she took her. You will disregard that, gentlemen of the jury.
Mr. Summers: Very well. I'll ask another question.

By Mr. Summers:

Q. It has been testified by Mr. Hawkins that he received sometime in November between $100.00 and $200.00 from you.
A. That's right.
Q. Is that correct?
A. Yes, sir.
Q. What was that for?
A. Well, it's money that I took from the cash register when I left.

Mr. Froeb: I have no questions, your Honor.
The Court: All right, you may step down.

Mr. Summers: We rest, your Honor.
The Court: Do you have any rebuttal, Mr. Froeb?
Mr. Froeb: No rebuttal witnesses.

(The following out of the hearing of the jury)

[fol. 49]

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AND OVERRULING THEREOF

Mr. Summers: At the conclusion of all of the testimony, the defendant moves the Court for a judgment of acquittal.
The Court: Overruled.

*****

Filed June 4, 1957.

Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 52] [Caption omitted]

[fol. 53]

IN UNITED STATES COURT OF APPEALS

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
September 5, 1957

(omitted in printing)

[fol. 54]

IN UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 5646—September Term, 1957

JAMES CLIFTON HAWKINS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the Northern District of Oklahoma

OPINION—November 9, 1957

Cleon A. Summers for appellant.

Russell H. Smith, First Assistant, United States Attorney, (B. Hayden Crawford, United States Attorney, was with him on the brief) for appellee.

Before Bratton, Chief Judge, and Huxman and Breitenstein, Circuit Judges.

BRATTON, Chief Judge.

[fol. 55] The indictment in this case charged that appellant transported a girl in interstate commerce from Mena, Arkansas, to Tulsa, Oklahoma, for immoral purposes. The jury found appellant guilty; the court sentenced him to imprisonment; and he appealed.

Error is predicated upon the action of the court in permitting the wife of appellant to testify as a witness for the government. With certain exceptions which have no bearing here, it was the general rule at common law that neither husband nor wife was competent to give testimony as a witness for or against the other in any case, civil or criminal; and for a long period of time that rule was

consistently iterated, reiterated, and applied in the United States courts. Stein v. Bowman, 13 Pet. 209, 221; Lucas v. Brooks, 18 Wall. 436, 452; Stickney v. Stickney, 131 U.S. 227; Graves v. United States, 150 U.S. 118; Hendrix v. United States, 219 U.S. 79, 91; Jin Fuey Moy v. United States, 254 U.S. 189. But it later became the settled rule in the United States courts that the wife of a defendant on trial for a criminal offense is a competent witness in his behalf. Funk v. United States, 290 U.S. 371. That case did not involve and the court did not determine the question whether a wife is a competent witness against her [fol. 56] husband on the trial of a criminal case in which he is charged with an offense. But in Yoder v. United States, 80 F. (2d) 665, this court committed itself to the view that a wife is a competent witness to give testimony against her husband on the trial of a criminal case in which he is charged with a crime. There, the witness and the defendant had been divorced prior to the time of the trial but the court did not place its decision upon that basis. Instead, the court expressly placed its decision upon the underlying ground that a wife is a competent witness for the government in a criminal case in which her husband is being tried for a criminal offense; and we are content to follow that case without any effort to amplify or elucidate further its undergirding philosophy.

But let it be assumed for the moment that the witness was not competent to give testimony against her husband. Laying aside the testimony which the government elicited from the witness, these facts were established upon the trial. The prosecutrix, a girl seventeen years of age, lived with her parents near Dogpatch, Oklahoma, a place consisting of two buildings, one a tavern in which she worked as a waitress and the other a dance hall owned by appellant. In November, 1955, the prosecutrix told appellant that she wanted a better job which paid more money and [fol. 57] he asked her if she cared to go to Tulsa and work with Jane. She understood that he meant to work as a prostitute in a hotel, and she agreed to do so. The following day, they drove to Mena and thence to Tulsa in appellant's automobile. They stopped at a filling station on the outskirts of Tulsa along towards daylight, and appel-

lant made a telephone call. In about thirty minutes, Jane and a woman referred to as Tommie came to the filling station. The prosecutrix went with Jane and Tommie to Jane's room in a hotel where Jane gave the prosecutrix advice respecting practices in the trade. The prosecutrix then went to another hotel, registered, and worked as a prostitute for two days before being arrested. Tommie furnished the money with which to pay the fine imposed upon the prosecutrix. After the fine was paid, the prosecutrix went to another hotel or rooming house where she registered and spent a day or two; and while there, she filled a couple of dates. The prosecutrix, Jane, and Tommie then went to Fort Smith, Arkansas, in Jane's automobile. Appellant joined them in Fort Smith. Appellant and the prosecutrix then went to Hot Springs, Arkansas, where they spent the night together; and from Hot Springs, the prosecutrix went by bus back home. Jane's true name was [fol. 58] Erma Lane Hawkins and she was married to appellant. Though not divorced, at the time of the transportation of the prosecutrix and at the time of the trial appellant and his wife were not living together. He was living at Dogpatch and she was living in Tulsa. While in the course of so-called qualifying questions propounded by the attorney for appellant and in the course of cross examination, the wife of appellant gave other testimony, the substance of the testimony which the government elicited from her was that she had been a prostitute, and that in November, 1955, she used the name Jane Wilson. She did not testify at the instance of the government to any act or statement on the part of appellant relating to the transportation of the prosecutrix; did not testify that she ever saw appellant and the prosecutrix together at any time or place; did not testify that she ever saw the prosecutrix anywhere; did not testify that she ever saw appellant at Tulsa, at Fort Smith, or at Hot Springs; and did not testify to any act performed or any statement or admission made by him. Even though it be said that she was incompetent to testify as a witness against her husband, the error in permitting her to give the testimony which the government elicited from her was harmless and therefore does not require reversal of the judgment.

Affirmed.

[fol. 59]

IN UNITED STATES COURT OF APPEALS

JUDGMENT—November 9, 1957

Before Honorable Sam G. Bratton, Chief Judge, and Honorable Walter A. Huxman and Honorable Jean S. Breitenstein, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Oklahoma and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment and sentence of the said district court in this cause be and the same is hereby affirmed.

It is further ordered by this court that James Clifton Hawkins, appellant, surrender himself to the custody of the United States Marshal for the Northern District of Oklahoma, in execution of the judgment and sentence imposed upon him, within ten days from and after the date of the filing of the mandate of this court in said district court.

(By order of November 21, 1957, the mandate of the United States Court of Appeals was stayed for a period of thirty days from November 19, 1957, under provision of paragraph 3 of rule 28.)

[fol. 60] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 61]

SUPREME COURT OF THE UNITED STATES

No. 652, October Term, 1957

JAMES CLIFTON HAWKINS, Petitioner,

v.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI—January 20, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.